

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MICHAEL S. TALLEY,
RESPONDENT
vs.**

**SWIFT TRANSPORTATION CO., et al.,
APPELLANT**

DOCKET NUMBER WD71901

DATE: SEPTEMBER 27, 2010

Appeal from:

The Circuit Court of Cass County, Missouri
The Honorable Jacqueline A. Cook, Judge

Appellate Judges:

Division Two: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Attorneys:

Stephen J. Voorhees, for Respondent

James R. Jarrow, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MICHAEL S. TALLEY, RESPONDENT

v.

SWIFT TRANSPORTATION CO., ET AL., APPELLANT

WD71901

Cass County, Missouri

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Michael Talley filed a petition for damages against Swift Transportation Company after he was involved in a vehicle collision with one of Swift's employees. After a trial, the jury returned a verdict assessing ten percent of fault to Swift and ninety percent of fault to Mr. Talley. The jury found that Mr. Talley's damages were \$125,000, regardless of his fault. Mr. Talley filed a motion for a new trial, and the trial court granted the motion on the ground that the verdict was against the weight of the evidence. Swift appeals.

AFFIRMED; REMANDED.

Division Three holds:

- (1) Where there was substantial evidence to support a verdict in Mr. Talley's favor, the trial court did not abuse its discretion in granting Mr. Talley's motion for a new trial on the basis that the verdict was against the weight of the evidence.
- (2) Where Missouri law allows trial courts to grant one new trial on the ground that a verdict is against the weight of the evidence, the trial court's grant of a new trial did not abridge Swift's right to a jury trial.
- (3) Where Mr. Talley's motion for a new trial could be interpreted to seek a new trial on the issue of damages as well as liability, and the trial court did not expressly limit the new trial to a specific issue, this court remands the case for a new trial with instructions that the issues of both liability and damages be retried.

Opinion by: Victor C. Howard, Judge

Date: September 27, 2010

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